

## APPENDIX A

### National Park Service Organic Act

16 U.S.C. 1 et seq. (1988), Aug. 25, 1916, ch. 408, 39 Stat. 535

There is created in the Department of the Interior a service to be called the National Park Service, which shall be under the charge of a director. The Secretary of the Interior shall appoint the director, and there shall also be in said service such subordinate officers, clerks, and employees as may be appropriated for by Congress. The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified, except such as are under the jurisdiction of the Secretary of the Army, as provided by law, by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

In 1916, the Department of the Interior was responsible for 12 national parks, 19 national monuments, and 2 reservations. The U.S. Forest Service managed the Grand Canyon and Mt. Olympus (Olympic National Park) mainly for timber harvest. The Army stationed a cavalry unit in Yellowstone year round and sent troops to Yosemite and Sequoia in the summer. The superintendents in charge of Interior lands had little or no experience managing natural areas and little or no help from the Department. Because of bad roads and scanty accommodations, comparatively few people visited the parks. Without public support, Congress would not allocate funding--parks in 1916 were run on less than a shoestring. From 1911 to 1915, numerous bills to establish a bureau of national parks had been introduced, but none had gotten out of committee. In 1916, Stephen Mather joined the Department and with Horace Albright began an aggressive campaign to educate congressmen and the public concerning the value of the national parks. Their campaign worked. In the summer of 1916, Congress passed the Organic Act, establishing the National Park Service to manage and protect national parks, monuments, and reservations.

The authors of the Organic Act were well aware of the conflicts between use and preservation, but they also knew that Congress would never agree to exclude these areas from public use. Frederick Law Olmsted, Jr., came up with the language that defines the Park Service today. By law, the National Park Service is mandated to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." This carefully chosen language has weathered numerous lawsuits which have in general served to strengthen the National Park Service's resource protection powers.

By 1970, the National Park System included historical parks, scenic riverways, recreation areas, and a variety of other designations. Some units' enabling legislation included special provisions that permitted consumptive activities in that unit, such as fishing, hunting, trapping, and mining. To clear up any confusion of the overall mission for each unit, Congress amended the Organic Act with language that tied all units back to the purposes stated in the Organic Act. Thus, while each unit is to be administered according to its enabling legislation, each is also ultimately to be managed following the directives of the Organic Act. (Also see General Authorities Act)

In 1974-76, the Sierra Club sued the National Park Service to take action against commercial loggers, whose activities outside the boundaries of Redwood National Park were damaging park resources. When Redwood was created, portions of the Redwood Creek watershed were left out of the original boundary for political reasons. Congress had authorized the Secretary to acquire easements and enter into management agreements with the timber companies, but the Park Service had not taken these actions, resulting in the lawsuit. The courts ruled that the Park Service had not taken the appropriate actions to protect the park, and the Park Service then asked Congress for help in taking such actions. (*Sierra Club v Department of the Interior*, 376 F. Supp. W N.D.Cal. 1974); *Ibid.*, 398 F. Supp. 284(1975); *Ibid.*, 424 F. Supp. 172 (1976).)

In response, Congress passed an amendment in 1978 to the Organic Act that addressed the problem. It

also generically strengthened the National Park Service's protective function. This amendment states that "the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." Thus, Congress' intent for each park as established in the park enabling legislation is upheld by the Organic Act, as well as Congress' option of amending that legislation if necessary. (Also see Redwood National Park Act)

As amended, the Organic Act allows the Secretary a great deal of latitude in making management decisions, and the courts have consistently upheld this latitude, especially if it is supported by careful study and planning. The Secretary can exclude a use that is detrimental to resources, or allow a use if it is determined to be appropriate. For example, commercial fishing is prohibited in Everglades National Park. When deciding a lawsuit brought by commercial fishermen challenging the regulation, the court carefully reviewed the planning and public information process and ruled that the Park Service was well within its administrative authority. (*Orgallized Fishermen v. Watt*, 590 F. Supp. 805 (S.D. Pla 1984); affirmed, 77 F.2d 1544 (11th Cir. 1985).) When the National Rifle Association challenged the Park Service's right to ban hunting and trapping (except where part of the unit's enabling legislation), the court ruled that the Organic Act clearly provided for the protection of wildlife and that the Park Service was acting within its authority. (*National Rifle Association v Potter*, 628 F. Supp. 903 (O.O.C. 1986).)

Alternatively, the Secretary can permit a use if it has been clearly proven not to threaten resources. For example, at Cape Cod the general management plan allows off-road vehicle (ORV) use under guidelines designed to protect the ecological integrity of the area. Environmental groups sued to stop ORV use altogether, on the assumption that any ORV use would permanently damage the ecosystem. The court ruled that the management plan adequately protected the ecosystem and that "Park Service decisions were the result of carefully designed, scientifically based studies and continued monitoring efforts." (*Conservation Law Foundation v Clark*, 590 F. Supp. 1467 (0. Mass. 1984).) The Organic Act will undoubtedly continue to be tested and defined in the courts. As it stands, it provides a powerful weapon in the National Park Service's continued battle to to protect the nation's natural and cultural resources.

#### References

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